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HIGH COURT OF JUDICATURE FOR MADHYA PRADESH AT JABALPUR

Division Bench (Crimi

CRIMINAL APPEAL NO. 946 /1997

APPELLANT: (IN JAIL) — Rakesh Kumar alias Nanki, son of Tigra Shrivas, aged about 33 years, resident of village Akola, Police Station Masturi, Tahsil and District Bilaspur (M.P.)

-: VERSUS :-

RESPONDENT : — State of Madhya Pradesh.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

6295 Conviction

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 946 OF 1997

Rakesh Kumar

Vs.

State of M.P.

JUDGEMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

21/02/2006

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C.BHADOO
Judge

JUDGE
22 /02/2006

POST FOR JUDGMENT ON 23rd FEBRUAR

Sd/-

J
22 /02/2006

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 946 of 1997

Appellant : Rakesh Kumar

Vs.

Respondent : State of Madhya Pradesh

Shri Sanjay K. Agrawal, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra and Shri M.P.S.Bhatia, learned Panel Lawyers for the respondent/State.

JUDGMENT
(23.02.2006)

Dhirendra Mishra, J

The appellant by the instant appeal under section 374(2) of the Code of Criminal Procedure has challenged the legality and correctness of the judgment dated 05th March 1997 passed by learned 6th Additional Sessions Judge, Bilaspur in S.T.No. 186/96 and by which after holding the accused/appellant guilty of causing death of Prahlad has convicted him under section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment.

2. The case of the prosecution, in brief, is that deceased Prahlad and accused Rakesh who were cousin and barbers by caste were engaged in the profession of hair cutting and are residents of the same village. However, customers were comparatively satisfied with the work of Prahlad, as a result of which customers of the appellant started reducing and thus the income of the appellant was also reducing. Therefore, because of this envy on 18.03.1996 at about 12.00 noon the appellant assaulted Prahlad by knife when he came to his new house where deceased Prahlad was playing harmonium and caused his death. The appellant went to the police station Masturi on the same day at about 15.00 hours and lodged the First

Information Report of Ex.P/14. Initially the police before registering the F.I.R., recorded merg intimation of Ex.P/15 at about 14.45 hours on the information of the appellant that he has caused death of Prahlad by knife and has covered the dead body with gunny bags and concealed it under the wood in his house and has locked the house from outside. Crime No. 94/96 under section 302 of the IPC was registered against the appellant. He has mentioned in the FIR that he took out knife from his pocket and assaulted the deceased when the deceased was playing harmonium and stated that while assaulting the deceased he has also sustained injuries over fingers of both his hands. He further stated he had covered the dead body by gunny bags and placed wood over it in his house and thereafter has locked the house from outside. Memorandum of the appellant under P-1 was recorded at about 15.30 hours in which accused/appellant Rakesh stated that he has murdered his cousin Prahlad after assaulting him by knife and has kept the dead body in the corner of his house by covering it with the gunny bags and wood and has locked the house. The knife, bunch of keys, bloodstained full pant and bloodstained shirt were seized from the accused Rakesh on 18.12.1996 in the police station at about 15.45 hours vide Ex.P/2. The police proceeded towards the place of incident. Discovery Panchanama of dead body of Ex.P/4 was prepared by A.S.I. B.C. Singh in the presence of the witnesses and the appellant on 18.03.1996 itself. Lock of the house of the appellant was seized from the appellant vide Ex.P/3. The inquest of Ex.P/9 over the dead body was performed after due notice to the witnesses. The dead body was sent for postmortem to Govt. Hospital, Masturi vide Ex.P/18. Dr. M.K. Rai (P.W.11) conducted postmortem over the dead body and submitted his report Ex.P/24. The doctor performing autopsy found six incised wounds over nose, right temporal region, right lateral of neck between chin and thyroid gland, below left elbow joint, on the base of the right thumb. Apart from the above incised wound, he also found stab injury on the anterior of the thyroid gland resulting in cut of the trachea and esophagus, stab injury on the right shoulder region and stab injury on the left thigh. He opined that all the injuries were ante mortem in nature and cause of death is asphyxia and excessive hemorrhage due to cutting of the trachea of thyroid on the thyroid region of the neck and cutting of the large vessels of

the neck (carotid and jugular vessels) and the death was opined to be homicidal in nature. The bloodstained gunny bags, six in number, by which the dead body was covered, four pieces of wood, a pair of slippers of the deceased were seized from the accused from his house after removing the same from the dead body vide Ex.P/12. Plain soil and bloodstained soil were taken into possession from the place of occurrence vide Ex.P/13. Sealed packet containing shirt, lungi and underwear of the deceased sent by the doctor performing autopsy was seized vide Ex.P/16. The weapon of offence – knife seized from the accused was sent for examination to the doctor vide Ex.P/19 and the doctor gave his opinion vide Ex.P/25 after examining the said knife that the injuries present over the person of the deceased could be caused by the knife. The spot map of Ex.P/20 was prepared by A.S.I. in the presence of witness namely Tularam. Seized articles were sent for chemical examination vide Ex.P/22. Spot map of Ex.P/7 was also prepared by Halka Patwari (P.W.2). After recording the statements of the witnesses charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur and the same was received on transfer by the learned 6th Additional Sessions Judge for trial. Learned trial Court framed charge under section 302 of the IPC. The appellant abjured his guilt.

3. The prosecution in order to establish its case examined as many as 11 witnesses. Statement of the accused was recorded under section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case. However, in reply to question No. 1 he admitted that he lodged the report Ex.P/14 in police station Masturi and in reply to question No. 2 he stated that he had come to kill him. In his statement the accused has also stated that his statement was recorded forcibly and he had no enmity.

4. After hearing the Additional Public Prosecutor on behalf of the State and counsel for the accused/appellant, the Court below convicted and sentenced the accused as mentioned above.

5. Homicidal death of deceased Prahlad is not in dispute. Even otherwise, from the statement of P.W. 11 Dr. Rai who has found as many as nine incised wounds and stab injuries over the body of the deceased and has opined that the death of the deceased was caused due to excessive bleeding and cutting of the trachea and thyroid on the thyroid region of the neck and cutting of the large vessels of the neck (carotid and jugular vessels) and as such the death was homicidal in nature, therefore, it is established that the death of deceased Prahlad was homicidal in nature.

6. Now the second question to be decided is – whether the prosecution has been able to establish the involvement of the accused in causing the death of deceased Prahlad?

7. Admittedly there is no eyewitness to the incident and the whole case rests on circumstantial evidence. The circumstances relied upon by the prosecution to establish the guilt of the accused may be summarized as under;

i) That the appellant went to the police station on the date of incident with bloodstained knife and gave information which was duly recorded as Ex.P/14 and on the basis of which offence was registered against him.

ii) That in the document of Ex.P/14, in the merg intimation of Ex.P/15 and in the memorandum of Ex.P/1, the appellant had stated that he has kept the dead body in the corner of his house by covering it with gunny bags and log of wood and had locked the house from outside.

iii) That on the disclosure of the appellant, the dead body of Prahlad was recovered from his house vide Panchanama of Ex.P/4

iv) That P.W. 5 Lekhram and P.W. 8 Ramayan on the date of incident at about 1.30 to 2.00 p.m. had seen the appellant running towards village Dodki and at that time he was putting on bloodstained pant and shirt.

v) That on 18.03.1996 bloodstained knife was seized from the appellant by P.W. 10 vide Ex.P/2 in the presence of the witnesses and seized articles i.e. knife, clothing of the deceased and other articles were sent for chemical examination to Forensic Science Laboratory and as per the report of F.S.L. dated 10.05.96 bloodstains were found over knife, clothing of the deceased and that of the accused.

vi) That during assault appellant Rakesh also sustained one incised injury over small finger of left hand, abrasion over ring finger, incised wound over upper portion of the small finger of the right hand and one abrasion over middle finger of the right hand.

8. We have heard learned counsel for the parties, perused the impugned judgment of the trial Court and the evidence available on record.

9. Defence of the accused/appellant is two fold. Firstly, it is argued on behalf of the accused/appellant that the whole case of the prosecution rests on the circumstantial evidence, however, the circumstances relied upon by the prosecution have not been established by leading cogent evidence. There is no motive for the appellant to kill the deceased and the motive attributed to the appellant for commission of the offence stands belied by the statements of the prosecution witnesses as P.W. 3 Tularam – father of the deceased who in paragraph -8 of his statement has denied the suggestions of animosity. Whereas P.W. 6 Pramod Kumar – brother of the deceased in paragraph -2 of his statement has stated that two days before the incident his elder brother did the shaving of the accused and the accused had done the shaving of the deceased and there was no animosity between them. It is true that from the evidence available on record apparent motive for commission of the offence is not established. It is further argued that the case of the prosecution is heavily based on the memorandum of the appellant recorded under Section 27 of the Evidence Act and in pursuance of the said

memorandum the dead body of the deceased was found from the locked house of the appellant.

10. Learned counsel for the accused/appellant relying upon the judgment of the Supreme Court reported in **(2004) 10 SCC 657** in the matter of **Anter Singh Vs. State of Rajasthan** submits that in the instant case requirement of Section 27 of the Evidence Act has not been fulfilled and therefore, recovery of the dead body of Prahlad from the house of the accused cannot be taken as a circumstance for establishing the guilt of the accused as the memorandum of the accused (Ex.P/1) was recorded at 15.30 hours on 18.03.1996 and from the documents of Ex.P/15 & P/14 i.e. merg intimation and First Information Report recorded at 14.45 hours and 15.00 hours on 18.03.1996 respectively, it would be evident that the fact disclosed by the appellant in his memorandum statement of Ex.P/1 was already known to the police. It is further argued that in order to prove the memorandum of the accused, it is necessary that the discovery is in consequence of the information received from the accused who is accused of any offence and he must be in the custody of the police officers and above all, discovery of the fact in consequence of information received from the accused in custody must be deposed to. However, in the instant case from perusal of the statement of P.W. 10 – Investigating Officer who has simply stated in paragraph -4 that on 18.03.1996 after arresting the accused Rakesh Kumar he recorded his memorandum statement of Ex.P/1 and thereafter in the presence of Panchas discovery Panchanama of dead body of Ex.P/4 was prepared, it is evident that this witness has nowhere stated that the dead body was discovered on the basis of information given by the accused/appellant.

11. In this regard learned counsel for the accused/appellant places his reliance on the judgments reported in **J.T. 2005 (7) SC page 1, State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, State (N.C.T. of Delhi) Vs. Syed Abdul Rehman Gilani, Shaukat Hussain Guru Vs. State (N.C.T. of Delhi), Mohd. Afzal Vs. State (N.C.T. of Delhi)** and the judgment reported

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in **1996 Cri. L.J. 317** in the matter of **M. Abbas Dakshina Kannada Vs. The State of Karnataka, Dakshina Kannada.**

12. It is further argued that the memorandum itself is not a substantive piece of evidence in the absence of express deposition in the Court by the investigating officer that he recorded a particular statement as per memorandum which is exhibited herein. He relies upon the judgment reported in **1996 Cr.L.J. 257** in the matter of **N. Rajendra Prasad Bhat. Vs. The State of Karnataka.**

13. Learned counsel for the accused/appellant further argues that the Court below considering the statements of P.W. 5 Lekhram and P.W. 8 Ramayan who have stated that on the date of incident they had seen the accused running towards village Dodki and at that time he was putting on the bloodstained pant and shirt, has taken the same as an incriminating circumstance against the accused/appellant ignoring the fact that P.W. 5 Lekhram has stated that when he asked the accused as to where he was going, the accused replied that he had quarreled with one Chamra and therefore, he was going to lodge the report in the police station. It is submitted that seizure of the bloodstained clothing of the deceased and bloodstained knife seized from the appellant, cannot be considered as incriminating circumstance in the absence of opinion of the serologists as to the origin of the blood found on the above articles.

14. On the other hand, learned counsel for the State supporting the impugned judgment of the trial Court submits that conduct of the accused after commission of the offence is admissible under Section 8 of the Evidence Act irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act or not. It is further argued that the accused in his statement in reply to questions put by the prosecution had admitted that he lodged oral report as per Ex.P/14 and has further stated that in fact Prahlad Kumar had come to kill him. In support of his contention reliance is placed on the judgments reported in **AIR 1972 SC 975, Himachal**

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Pradesh Administration Vs. Om Prakash and **AIR 1979 SC 400 , Prakash Chand Vs. State (Delhi Admn.)**.

15. Ex.P/1 is the memorandum of the appellant which was recorded in the presence of witnesses Jainarayan (P.W. 1) and Kashiram (P.W.9) by A.S.I. Vindhyachal Singh (P.W.10). Before recording of memorandum statement of Ex.P/1 on the information of the accused/appellant that he has kept the dead body of deceased Prahlad in his house and locked it, merg intimation of Ex.P/15 and F.I.R. of Ex.P/14 were recorded one after the another. The F.I.R. also bears the signatures of witness Jainarayan and Kashiram. Objection of learned counsel for the accused/appellant is that the document of Ex.P/1 has not been proved in accordance with law and therefore, cannot be led as evidence. It is stressed that the document could be taken into consideration only on the condition that the police officer who prepared it, should have himself reproduced its contents in evidence either orally or by reproducing the same by refreshing his memory after reference to Ex.P/1. For this, paragraph -16 of the judgment delivered In the matter of Anter Singh (supra) relied upon is being reproduced as under;

> *16. The various requirements of the section 27 of the Evidence Act can be summed up as follows:-*
>
> *(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.*
>
> *(2) The fact must have been discovered.*
>
> *(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.*

(4) *The person giving the information must be accused of any offence.*

(5) *He must be in the custody of a police officer.*

(6) *The discovery of a fact in consequence of information received from an accused in custody must be deposed to.*

(7) *Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.*

16. In the matter of State (NCT of Delhi) (supra) the Supreme Court has reiterated the conditions pre-requisite for applying Section 27 of the Evidence Act in support of the prosecution case. In the matter of N.Rajendra Bhatt (supra) in paragraph- 16 also Kernataka High Court has held that the investigating officer recording statement of accused should depose in the Court that he recorded a particular statement of the accused as per certain record made by him and then refers to the memo of Panchanama and memo of Panchanama itself cannot take place of substantive evidence.

17. In the instant case, the investigating officer in paragraph 4 of his evidence has stated that he has recorded the memorandum statement of the accused on 18.03.1996 which is Ex.P/1 in which his signature is from 'c' to 'c' and has further stated that on 18.03.1996 in the presence of Panchas after discovery of dead body of Prahlad, discovery memo of Ex.P/4 was prepared in which he and the accused have put their signatures from 'd' to 'd' and 'e' to 'e'. P.W. 1 Jainarayan is the attesting witness of memorandum of Ex.P/1 who has stated that accused Rakesh gave information before Kashiram, Station House Officer and himself in the police station Masturi to the effect that he had put the dead body in the corner of his house, covered the same by gunny bags and wood and thereafter he took them along with police personnel to village Akola. The lock of the house was opened and thereafter accused Rakesh took out the gunny bags from the corner and had shown the dead body in the gunny bag. On the information given by the villagers he

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came to know that the dead body was of Prahlad. He has admitted his signatures over Ex.P/1, Ex.P/2, Ex. P/3 and discovery memo of Ex.P/4. In the cross-examination he has stated that accused Rakesh was carrying knife, however, he does not recollect whether the knife, key and clothing were seized before him or not. In the cross-examination he denied the suggestion on behalf of the accused that when the accused entered his house Prahlad assaulted him by knife, however, he saved it with his hand as a result of which he sustained injuries over his hand. He has also denied that the accused gave information that there was some scuffle for snatching as a result of which the knife in the hand of Prahlad came in the hand of accused and in the self defence he assaulted Prahlad. PW-9 Kashiram has also stated that in the police station the accused informed that he had concealed the dead body with the gunny bags and kept wood over it and thereafter he took the police to the spot. PW-1 Jainarayan and ASI accompanied them to the house of the accused. The accused opened the lock of his room and from there he got discovered the dead body lying under the gunny bags and wood in the corner of his house. He has also stated that in the police station the accused took out a knife from his pocket and handed over the same to the Police. In the cross examination of the above two witnesses the defence has not been able to elicit anything which makes the statement of the above two witnesses unreliable or untrustworthy.

18. Section 27 is based on the doctrine of confirmation by subsequent facts. The doctrine is that where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered which confirm it in material particulars, then such discovery is a guarantee that the confession made was true. But what is important to note is that only that portion of the information can be proved which relates distinctly or strictly to the fact discovered. We have already referred to the statement of investigating officer in which he has not stated in so many words in his Court statement that what was the nature of information given by the accused in his memorandum statement and further that on the basis of the memorandum statement the body of the deceased was recovered from his house, though he has stated that he recorded the information given by the accused as per

Ex.P/1 and in pursuance of the recovery of the dead body, discovery memo of Ex.P/1 was prepared. However, we have also referred to the statements of P.W. 1 Jainarayan and P.W. 9 Kashiram the attesting witnesses of Ex.P/1 who have stated that the accused in their presence revealed in the police station that he has concealed the dead body of Prahlad in the corner of his house by putting gunny bags and log of wood over it. They have also admitted their signatures over the memo of Ex.P/1.

19. Now the only question remains to be decided is - whether receiving of such information by the accused/appellant has been done in accordance with law or not?

20. It is correct that the statements or reports prepared outside the Court, cannot be by themselves accepted as preliminary or substantive evidence of the facts stated therein and oral evidence must, in all cases whatever, be direct, that is to say- if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it and so on as per Section 60 of the Evidence Act. Section 159 of the Evidence Act permits a witness to refresh his memory by referring to any writing made by himself at the time of transaction concerning which he is questioned and Section 160 of the Evidence Act provides for cases where the witness has no independent recollection say, from lapse of memory, of the transaction to which he wants to testify by looking at the document and states that although he has no such recollection he is sure that the contents of the document were correctly recorded at the time they were recorded and accordingly in our opinion in such circumstances the documents itself becomes primary evidence in the case.

21. From the above discussions, we think that the correct legal position is somewhat like this that normally the police officers or an attesting witness should reproduce the contents of the statement made by the accused under Section 27 of the Evidence Act in Court by refreshing his memory under Section 159 of the Evidence Act from the memorandum earlier prepared

thereof by him at the time the statement had been made to him or in his presence and which was recorded at the same time or soon after the making of it and that would be perfectly unexceptional way of proving such a statement. We further think from the fact and surrounding circumstances of the case that it could hardly be expected in the natural course of human conduct that he could or would have a precise or dependable recollection of the same, then under Section 160 of the Evidence Act, it would be open to the witness to rely on the document itself and swear that the contents thereof are correct where he is sure that they are so and such a case would naturally arise where he happens to have recorded the statement himself or where it has been recorded by some one else but in his own presence, and in such a case the document itself would be acceptable as substantive evidence of the facts contained therein.

22. In the instant case memorandum of Ex.P/1 was recorded on 18.03.1996 whereas the statement of the investigating officer P.W.10 was recorded on 22.12.1996 i.e. more than nine months after recording of the memorandum (Ex.P/1). Investigating officer has stated on oath that he prepared the memorandum of Ex.P/1 which bears his signature and thereafter the dead body of Prahlad was recovered on 18.03.1996 and Panchanama of Ex.P/4 was prepared which bears his signature and signatures of the witnesses. There is no cross-examination on behalf of the accused to challenge the veracity of the statement of this witness regarding recording of memorandum or preparing of discovery Panchanama of the dead body, on the contrary, the Panch witnesses who are signatory to the memorandum and recovery memorandum, have stated and proved the memorandum statement given by the accused/appellant and recovery of the dead body in the pursuance of the same, therefore, we have no hesitation in arriving at the conclusion that the circumstance of recovery of the dead body on the basis of the memorandum given by the accused to the police while he was in custody, has been established by cogent evidence.

23. We further observe that the conduct of the accused in giving merg intimation of Ex.P/15 and FIR of Ex.P-14 at his own is a strong circumstance

which is admissible under Section 8 of the Evidence Act and in fact law enforcing agency came into action only on the basis of the above information given by the accused. The conduct of the appellant that he went to police station with the bloodstained knife, gave merg intimation, lodged FIR and thereafter, knife and bunch of key, bloodstained pant and shirt of the accused were seized and the seized articles were sent to the FSL and as per report dated 10.05.1996, the knife seized from the accused Rakesh, his clothing and clothing of the deceased contain bloodstains, is a circumstance which points towards the guilt of the accused.

24. We are fortified in our view by the judgment of the Supreme Court in the matter of **A.N. Venkatesh and another Vs. State of Karnataka** reported in **2005 AIR SCW 3914** wherein it is held in paragraph 9 of this judgment that;

> 9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand Vs. State (AIR 1979 SC 400).* Even if we hold that the disclosure statement made by the accused appellants (Ex.P/14 and P/15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and P.Ws. 1,2,7 and P.W.4 the spot mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.

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25. So far as the circumstance that PW-5 Lekhram and PW-8 Ramayan saw the appellant running towards village Dodki putting on bloodstained pant and shirt is concerned, both the witnesses have categorically stated the above fact in their statements. Submission of learned counsel for the appellant is that PW-5 Lekhram has stated in paragraph -1 that on being asked the appellant stated that he had a quarrel with one Chamra and therefore, the appellant was proceeding to the police station to lodge the report and as such the circumstance relied upon by the prosecution in this regard is of no consequence. We are of the considered opinion that the incriminating circumstance appearing in the statements of PW-5 and PW-8 cannot be ignored solely on the above ground as the appellant has not taken this defence either by way of suggestion that he had in fact some quarrel with Chamra and further that the circumstances deposed by these witnesses in their statements go to show the conduct of the accused in lodging the FIR of Ex.P/14, therefore, the above circumstance is also duly established.

26. The last circumstance that on examination of the accused/appellant injuries were found on his fingers as mentioned by PW-11 Dr. M.K.Rao who has described the said injuries in paragraph – 12 of his statement, establishes the fact that the appellant sustained above injuries while assaulting the deceased by knife. The appellant has also taken a defence of right of private defence on the ground that the incident took place in his house and in fact the deceased had come with knife to assault him and he sustained the above injuries while exercising the right of private defence. However, looking to the nature of injuries present over the person of the deceased and further considering that in the information given by the appellant in the police station, this fact was not disclosed by him, the defence of right of private defence of the appellant is not established.

27. Thus from the above analysis on the basis of evidence available on record the circumstances relied upon by the prosecution in paragraph -7 of this judgment have been correctly held as established by the learned Additional Sessions Judge. From the circumstances so established, the inference of the guilt of the accused/appellant is cogently and firmly

established. Recovery of the dead body from the corner of the locked house of the appellant on his memorandum statement clearly and unerringly points towards the guilt of the accused. There is no illegality or infirmity in the impugned judgment of the trial Court.

28. We find no merit in this appeal. In our considered view no such error as has been pointed out by the counsel for the accused/appellant can be said to have been committed by the trial Court, nor any other infirmity to undermine the legality and propriety of the findings of the trial Court, warranting our interference has been substantiated, in this case.

29. In the result, the appeal being devoid of merit is liable for dismissal and the same is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Sd/-